

South Australia

National Parks and Wildlife (Protected Animals—Marine Mammals) Regulations 2010

under the *National Parks and Wildlife Act 1972*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *National Parks and Wildlife (Protected Animals—Marine Mammals) Regulations 2010*.

2—Commencement

These regulations will come into operation 4 months after the day on which they are made (see *Subordinate Legislation Act 1978* section 10AA).

3—Regulations under section 68(1)(c) of Act

These regulations (other than Schedule 2) are made under section 68(1)(c) of the Act.

Notes—

- 1 Under section 68(1)(c) of the Act a person must not undertake or continue an act or activity in relation to a protected animal that is contrary to regulations promulgated under that section unless the person acts pursuant to the Act or a permit granted by the Minister under section 68(2) or another provision of the Act or pursuant to some other Act or statutory instrument.
- 2 Under section 68(2) of the Act the Minister may grant a permit to a person to undertake an act or activity in relation to a protected animal that would otherwise contravene section 68(1).

4—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *National Parks and Wildlife Act 1972*;

Adelaide Metropolitan Beaches Restricted Area—see Schedule 1 clause 1;

aircraft means any machine or equipment designed to be flown by a person who has control over its speed and direction of movement but does not include a hovercraft;

calf means—

- (a) a young dolphin that is less than half the length of an adult female dolphin of the same species; or
- (b) a young whale that is less than half of the length of an adult female whale of the same species;

Encounter Bay Restricted Area—see Schedule 1 clause 2;

Great Australian Bight Marine Park Whale Sanctuary means the aquatic reserve of that name constituted under the *Fisheries Management Act 2007*;

Note—

The Great Australian Bight Marine Park Whale Sanctuary was constituted as a marine park by proclamation made under section 48(1) of the *Fisheries Act 1982* on 22 June 1995 (*Gazette 22.06.1995 p2896*) and continues in existence as an aquatic reserve under section 4 of the *Fisheries Management Act 2007* by virtue of Schedule 1 Part 2 clause 8 of that Act.

motorised vessel means a vessel that has a motor or engine as its principal source, or 1 of its principal sources, of motive power;

observe, in relation to a marine mammal, means to watch, or listen to, the marine mammal and includes to take photographs or films or to make audio, video or other recordings of the marine mammal;

personal watercraft means a jet ski or other motorised vessel designed to be operated by a person standing, sitting astride or kneeling on the vessel but not seated within the vessel;

prescribed vessel means any of the following vessels:

- (a) a personal watercraft;
- (b) a vessel used to engage in water skiing;
- (c) a vessel used to engage in parasailing;
- (d) a hovercraft;
- (e) a hydrofoil;
- (f) a wing-in-ground effect craft;

prescribed viewing structure means a jetty, boardwalk or other man-made viewing platform or structure;

pup means a young seal or sea lion that is less than 1 metre in length or is suckling;

signs of disturbance—see regulation 9;

submersible means a machine designed to move 1 or more persons underwater;

swimmer includes a person using a bodyboard, boogie board or surfboard;

vessel means a boat or other craft, or a device, that is designed—

- (a) to float on water; and
- (b) to be navigated or manoeuvred by a person who has control over its speed and direction of movement,

and includes a submersible but does not include a bodyboard, boogie board or surfboard.

5—Application of regulations

- (1) These regulations only apply to, and in relation to, marine mammals that—
 - (a) are protected animals; and
 - (b) are in the wild.

- (2) These regulations do not apply to a person to the extent that—
- (a) the person is acting reasonably in the best interests of a marine mammal that—
 - (i) is suffering from injury, disease or exhaustion; or
 - (ii) is stranded; or
 - (iii) is entangled or otherwise incapacitated by material of human origin; or
 - (b) the person is responding in a reasonable manner to an emergency involving danger to human life or damage to the environment; or
 - (c) the person is acting in accordance with the directions or instructions of a warden.

Part 2—Interaction with marine mammals

Division 1—Vessels

6—Interpretation

In this Division, a reference to a *person who is in control of a vessel* includes a reference to a swimmer who is using a submersible or other vessel.

7—Application of Division

This Division only applies in relation to a vessel if the observing of marine mammals or swimming near marine mammals is the purpose, or 1 of the purposes, for which the vessel is being used.

8—Distance to be kept by prescribed vessels

A person who is in control of a prescribed vessel must not move the vessel closer than 300 metres to a marine mammal.

9—Distance to be kept by other vessels

- (1) A person who is in control of a vessel that is not a prescribed vessel must not—
- (a) move the vessel closer than 100 metres to a whale; or
 - (b) move the vessel closer than 50 metres to a marine mammal other than a whale.
- (2) A person who is in control of a vessel that is not a prescribed vessel must not move the vessel closer than 300 metres to a whale if—
- (a) the whale—
 - (i) shows signs of disturbance; or
 - (ii) appears to be sick or injured; or
 - (iii) is stranded; or
 - (iv) is entangled or otherwise incapacitated by material of human origin; or

- (v) is a calf; or
 - (vi) is within the Encounter Bay Restricted Area; or
 - (b) there are 2 vessels already within 300 metres of the whale.
- (3) A person who is in control of a vessel that is not a prescribed vessel must not move the vessel closer than 150 metres to a marine mammal other than a whale if—
- (a) the marine mammal—
 - (i) shows signs of disturbance; or
 - (ii) appears to be sick or injured; or
 - (iii) is stranded; or
 - (iv) is entangled or otherwise incapacitated by material of human origin; or
 - (v) is a calf or pup; or
 - (b) there are 2 vessels already within 150 metres of the marine mammal.

Examples—

The following are examples of a dolphin or whale showing signs of disturbance:

- attempts to leave an area;
- attempts to leave waters in the vicinity of a vessel;
- hasty diving;
- changes in breathing patterns;
- increased time diving as compared with time spent at the surface of waters;
- changes in acoustic behaviour;
- the onset of aggressive behaviour such as tail slashing or trumpet blowing.

The following are examples of a seal or sea lion showing signs of disturbance:

- rapid movement from land towards water;
- sudden awakening from sleep on land;
- the onset of vocalisation or growling;
- attempts by a female to shield a pup with her body or by her movements.

10—Operation of vessels close to marine mammals

- (1) A person who is in control of a vessel that is within 300 metres of a whale must not—
- (a) approach the whale head on or tail on; or
 - (b) drop an anchor from the vessel; or
 - (c) allow the vessel to remain within 300 metres of the whale for more than 60 minutes.
- (2) A person who is in control of a vessel that is within 150 metres of a marine mammal other than a whale must not—
- (a) approach the marine mammal head on or tail on; or
 - (b) drop an anchor from the vessel; or

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Part 2—Interaction with marine mammals

Division 1—Vessels

- (c) allow the vessel to remain within 150 metres of the marine mammal for more than 60 minutes.
- (3) If a whale moves towards a vessel that is within 300 metres of the whale, the person who is in control of the vessel must not use, or continue using, the vessel to enable persons on the vessel to observe the whale or swim near it unless he or she either maintains the vessel's position or moves it away from the whale.
- (4) If a marine mammal other than a whale moves towards a vessel that is within 150 metres of the marine mammal, the person who is in control of the vessel must not use, or continue using, the vessel to enable persons on the vessel to observe the marine mammal or swim near it unless he or she either maintains the vessel's position or moves it away from the marine mammal.
- (5) While a vessel is within 300 metres of a whale, the person who is in control of the vessel must not move the vessel between that whale and another whale that is within 300 metres of the vessel.
- (6) While a vessel is within 150 metres of a marine mammal other than a whale, the person who is in control of the vessel must not—
- (a) move the vessel between a dolphin and another dolphin that is within 150 metres of the vessel; or
 - (b) move the vessel between a seal or sea lion and another seal or sea lion that is within 150 metres of the vessel.
- (7) If a dolphin is swimming on a pressure wave created ahead of the bow of a vessel, the person who is in control of the vessel must, while the dolphin is so swimming, maintain the vessel's direction and speed unless it is necessary for the vessel to stop, in which case, the person must reduce the vessel's speed gradually.
- (8) If a whale shows signs of disturbance by the presence of a vessel that is within 300 metres of the whale, the person in control of the vessel must move the vessel to at least 300 metres from the whale and keep the vessel at that distance until the whale no longer shows signs of disturbance.
- (9) If a marine mammal other than a whale shows signs of disturbance by the presence of a vessel that is within 150 metres of the marine mammal, the person in control of the vessel must move the vessel to at least 150 metres from the marine mammal and keep the vessel at that distance until the marine mammal no longer shows signs of disturbance.

11—Speed of motorised vessels close to marine mammals

A person who is in control of a motorised vessel that is within—

- (a) 300 metres of a whale; or
 - (b) 150 metres of a marine mammal other than a whale,
- must not operate the vessel at a speed exceeding 4 knots.

Division 2—Aircraft

12—Distance to be kept by aircraft

- (1) This regulation only applies in relation to an aircraft if the observing of marine mammals is the purpose, or 1 of the purposes, for which the aircraft is being used.
- (2) A person who is in control of a gyrocopter or helicopter must not fly it—
 - (a) at an altitude of less than 500 metres above a marine mammal; or
 - (b) at an altitude of less than 500 metres above any part of a circular area that has a marine mammal at its centre and a radius of 500 metres.
- (3) A person who is in control of an aircraft other than a gyrocopter or helicopter must not fly it—
 - (a) at an altitude of less than 300 metres above a marine mammal; or
 - (b) at an altitude of less than 300 metres above any part of a circular area that has a marine mammal at its centre and a radius of 300 metres.
- (4) If a marine mammal shows signs of disturbance by the presence of an aircraft, the person in control of the aircraft must not use, or continue using, it to enable persons in the aircraft to observe the marine mammal unless he or she flies it away from the marine mammal until the marine mammal no longer shows signs of disturbance.

Division 3—People

13—Interpretation

In this Division, a reference to a *swimmer* includes a swimmer who is snorkelling or using scuba or hookah equipment but does not include a swimmer who is using a submersible or other vessel.

14—Distance to be kept by swimmers

- (1) A swimmer must not move closer than 30 metres to a marine mammal.
- (2) A swimmer must not move closer than 300 metres to a whale if the whale—
 - (a) shows signs of disturbance; or
 - (b) appears to be sick or injured; or
 - (c) is stranded; or
 - (d) is entangled or otherwise incapacitated by material of human origin; or
 - (e) is a calf.
- (3) A swimmer must not move closer than 150 metres to a marine mammal other than a whale if the marine mammal—
 - (a) shows signs of disturbance; or
 - (b) appears to be sick or injured; or
 - (c) is stranded; or
 - (d) is entangled or otherwise incapacitated by material of human origin; or

(e) is a calf.

(4) A swimmer must not remain within—

(a) 300 metres of a whale; or

(b) 150 metres of a marine mammal other than a whale,

for more than 30 minutes.

15—Distance to be kept by persons on land

(1) A person who is on land must not move closer than 30 metres to a seal or sea lion (whether the seal or sea lion is on land or in water).

(2) A person who is on land must not move closer than 50 metres to a marine mammal (whether the marine mammal is on land or in water) if the marine mammal—

(a) shows signs of disturbance; or

(b) appears to be sick or injured; or

(c) is stranded; or

(d) is entangled or otherwise physically incapacitated by material of human origin; or

(e) is a calf or pup.

(3) Subregulation (1) or (2) does not apply if a person is on a prescribed viewing structure and no seal or sea lion is present on the structure at the same time.

(4) If a seal or sea lion present on a prescribed viewing structure moves closer than 30 metres to a person, the person must maintain his or her position on the structure or move away from the seal or sea lion.

16—Feeding marine mammals

A person must not—

(a) feed a marine mammal; or

(b) dispose of any material into water if—

(i) the person knows, or ought reasonably to know, that a marine mammal is in the vicinity; or

(ii) the material is likely to be eaten, ingested or otherwise absorbed by the marine mammal.

17—Touching marine mammals

A person must not touch a marine mammal.

18—Noise or lights near marine mammals

A person who is—

(a) within 300 metres of a whale for the purpose of observing the whale; or

(b) within 150 metres of a marine mammal other than a whale for the purpose of observing the marine mammal,

must not—

- (c) make, or cause to be made, a noise that is likely to frighten or otherwise cause distress to the whale or other marine mammal because of its loudness or suddenness or for any other reason; or
- (d) play back a recording of sounds made under water in a manner that is likely to be heard by the whale or other marine mammal; or
- (e) use underwater a torch, flash unit or any other form of artificial lighting that is likely to be seen by the whale or other marine mammal.

Part 3—Miscellaneous

19—Restrictions on commercial activities

- (1) A person must not, for fee or reward—
 - (a) use a vessel to take another person into the vicinity of a seal or sea lion to enable the other person to—
 - (i) observe the seal or sea lion from the vessel; or
 - (ii) swim near the seal or sea lion; or
 - (b) use aircraft to take another person into the vicinity of a seal or sea lion to enable the other person to swim near the seal or sea lion; or
 - (c) using means other than aircraft or a vessel, take another person into the vicinity of a seal or sea lion to enable the other person to observe the seal or sea lion or swim near it; or
 - (d) assist another person in the vicinity of a seal or sea lion to observe the seal or sea lion or swim near it.
- (2) A person must not, for fee or reward—
 - (a) use aircraft or a vessel to take another person into the vicinity of a dolphin or whale to enable the other person to swim near the dolphin or whale; or
 - (b) using means other than aircraft or a vessel, take another person into the vicinity of a dolphin or whale to enable the other person to swim near the dolphin or whale; or
 - (c) assist another person in the vicinity of a dolphin or whale to swim near it.
- (3) A person must not, for fee or reward—
 - (a) use aircraft or a vessel to take another person into a prescribed area to enable the other person to—
 - (i) observe a marine mammal from the aircraft or vessel; or
 - (ii) swim near a marine mammal; or
 - (b) using means other than aircraft or a vessel, take another person into a prescribed area to enable the other person to observe a marine mammal or swim near it; or
 - (c) assist another person in a prescribed area to observe a marine mammal or swim near it.

- (4) In this regulation—
- prescribed area* means—
- (a) the Adelaide Dolphin Sanctuary as defined in the *Adelaide Dolphin Sanctuary Act 2005*; or
 - (b) the Adelaide Metropolitan Beaches Restricted Area; or
 - (c) the Encounter Bay Restricted Area; or
 - (d) the Great Australian Bight Marine Park Whale Sanctuary.
- (5) This regulation does not apply to a person who takes another person to a place, as part of a tour operated for fee or reward, to enable the other person to observe a marine mammal from a prescribed viewing structure.

20—Fees

The fees set out in Schedule 2 are prescribed in relation to a permit issued by the Minister under section 68(2) of the Act.

Schedule 1—Restricted Areas

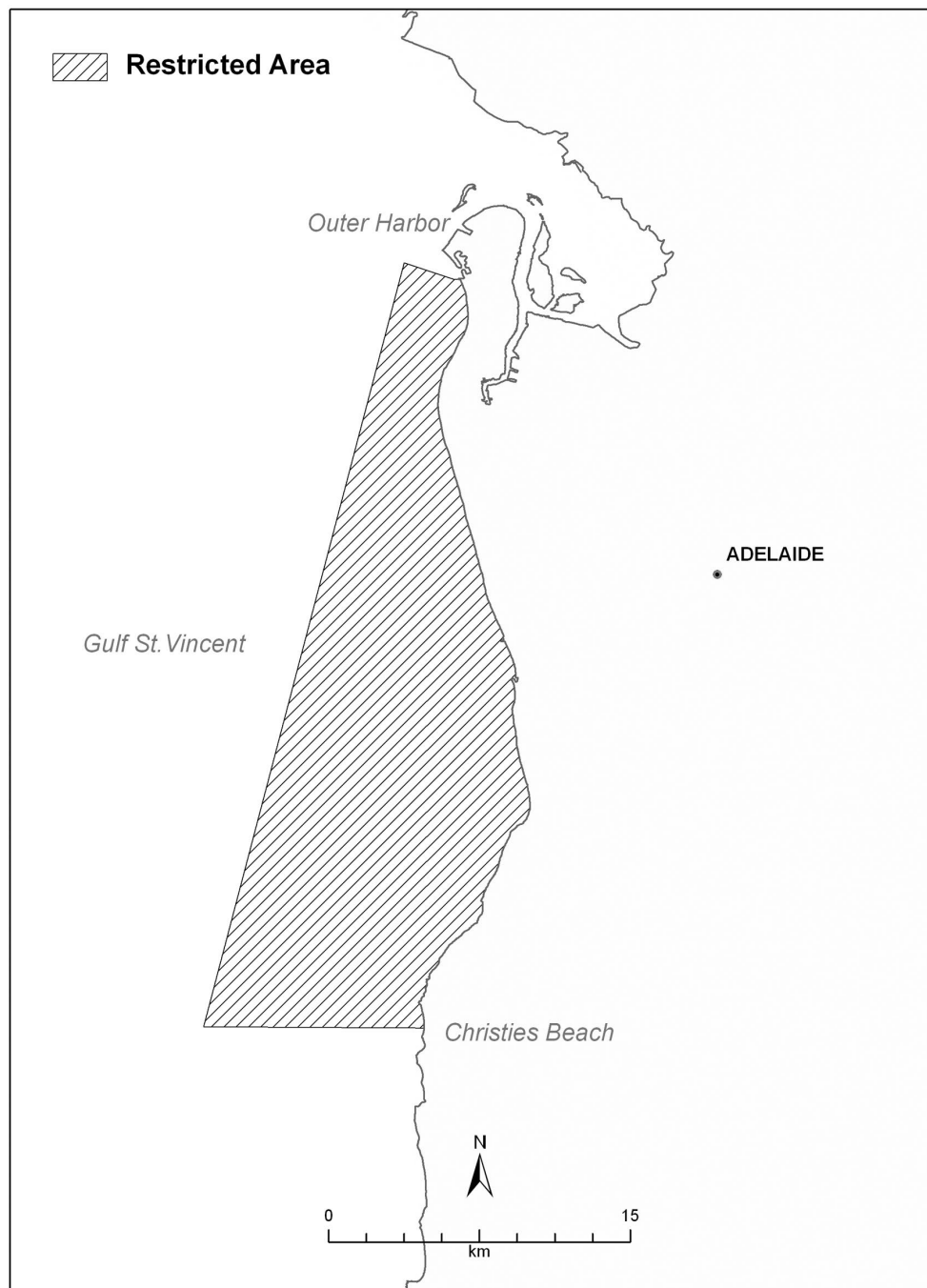
Note—

The maps in this Schedule are provided for convenience of reference only.

1—Adelaide Metropolitan Beaches Restricted Area

Commencing at the western-most point of Allotment 223 (DP 32591), Hundred of Port Adelaide, being a point on the southern breakwater of the Gulf Point Marina, then generally easterly along the southern boundary of Allotment 223 (DP 32591) to the median high water mark, then southerly along the median high water mark to 35°7'52.72" South, 138°28'11.1" East, then westerly to 35°7'52.72" South, 138°22'15.6" East, then north-easterly to 34°47'19.38" South, 138°27'38.76" East, then in a south-easterly direction in a straight line to the point of commencement.

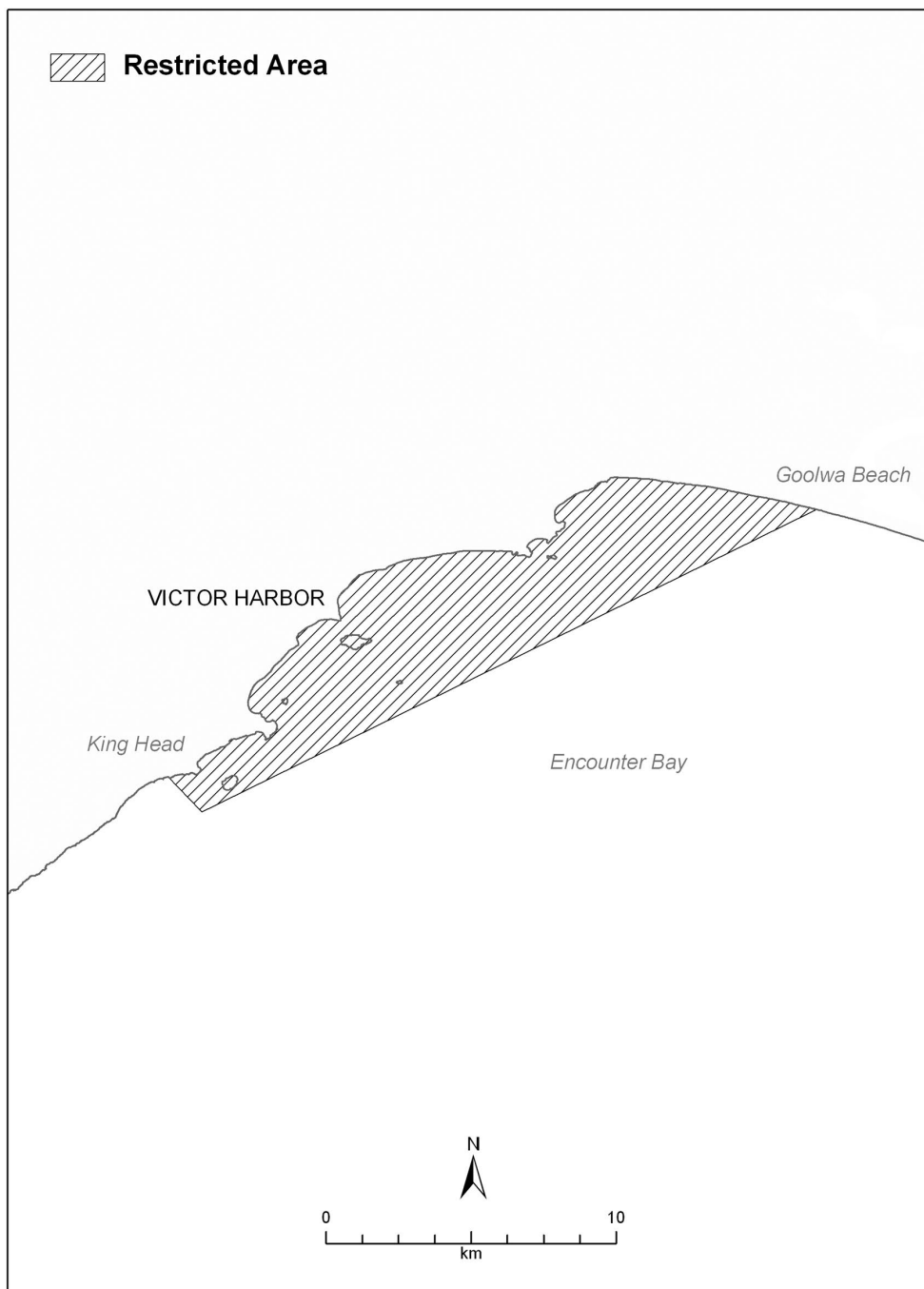
Adelaide Metropolitan Beaches Restricted Area



2—Encounter Bay Restricted Area

Commencing at a point at the high water mark approximately 1.5 kilometres west of Kings Head, position latitude 35°36'3" South, longitude 138°34'5" East, then 1 nautical mile south-easterly to position latitude 35°37'0" South, longitude 138°35'0" East, then to a point at the high water mark near the Goolwa Beach car park, position latitude 35°31'23" South, longitude 138°46'25" East, then to the point of commencement along the high water mark.

Encounter Bay Restricted Area



Schedule 2—Fees

1	On application for the issue of a permit under section 68(2) of the Act authorising acts or activities in relation to marine mammals that are contrary to these regulations—	
	(a) in the case of an application for a permit subject only to standard conditions	\$350
	(b) in any other case	\$550
2	On application for the issue of a duplicate permit	\$20

Schedule 3—Revocation of *National Parks and Wildlife (Whales and Dolphins) Regulations 2000*

The *National Parks and Wildlife (Whales and Dolphins) Regulations 2000* are revoked.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

Year	No	Reference	Commencement
2010	263	<i>Gazette 16.12.2010 p5703</i>	16.4.2011: r 2